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THEIN HONG TECK & ORS

v.

TRA MINING (MALAYSIA) SDN BHD & ORS

B

HIGH COURT MALAYA, KUALA LUMPUR
HAMID SULTAN ABU BACKER J
[SUIT NO: D-22NCC-776-2009]
26 AUGUST 2010

C ***COMPANY LAW:*** *Winding up - Setting aside - Application to set aside order of winding up granted by the court - Whether a 'partnership firm' registered in the business registry could be a subject matter of a winding up order pursuant to s. 314 Companies Act 1965 - Whether winding up order a nullity ab initio and should be set aside - Whether*
D *court has jurisdiction to set aside order of concurrent jurisdiction*

CIVIL PROCEDURE: *Setting aside - Application for - Application to set aside order of winding up granted by the court - Whether a 'partnership firm' registered in the business registry could be a subject*
E *matter of a winding up order pursuant to s. 314 Companies Act 1965 - Whether winding up order a nullity ab initio and should be set aside - Whether court has jurisdiction to set aside order of concurrent jurisdiction*

WORDS & PHRASES: *"Partnership" - Companies Act 1965, s. 314 - Wording of - Whether provided for 'partnership' per se to be treated as*
F *unregistered company - Whether court must endeavour to give significance to every word in an enactment*

The plaintiff applied to set aside an order of winding up granted by the Malacca High Court. The first and second defendant *via*
G encl. 10 and encl. 11 respectively applied to strike out the plaintiff's claim. The issues that arose were (i) whether a '"partnership firm" registered in the business registry could be a subject matter of a winding up order by a company court pursuant to s. 314 Companies Act 1965 ('CA 1965') which deals with
H "unregistered company"; (ii) whether the order of the Malacca High Court could be set aside by this court on the ground that it was a nullity *ab initio*; (iii) and if so, whether this court had jurisdiction to set aside an order of court of concurrent jurisdiction.

I

Held (setting aside the order of the Malacca High Court):

(1) In Malaysia the general practice in relation to partnership matters for debt due and owing is to sue the partners personally and thereafter if they are insolvent to proceed for bankruptcy. Partnership firm in the Malaysian context and pursuant to case laws is not a separate legal entity. There is a separate regime provided by law to deal with insolvency of partners and/or dissolution of partnership firms (see Partnership Act 1961; Bankruptcy Act 1967). From the wording of s. 314(1) CA 1965, Parliament had this in mind and it clearly did not provide for 'partnership' *per se* to be treated as unregistered company and to be wound up by the company court. It is trite that the court must endeavour to give significance to every word in an enactment. (para 10)

(2) The order of the Malacca High Court was a nullity *ab initio* and a court of concurrent jurisdiction could set it aside based on the Federal Court decision of *Badiaddin Mohd Mahidin & Anor v. Arab Malaysian Finance Bhd*. The word partnership in s. 314(1) of CA 1965 must be read conjunctively and not disjunctively. In consequence the CA 1965 does not permit a partnership to be wound up *per se* unless the criteria set out in the section is satisfied. The facts of the instant case clearly showed that the winding up order was obtained by the petitioners in the Malacca Court in breach of salient provision of the law, and was liable to be set aside *ab initio*. (para 15)

Case(s) referred to:

Abric Project Management Sdn Bhd v. Palmshine Plaza Sdn Bhd & Anor [2007] 10 CLJ 7 HC ***(refd)***

Badiaddin Mohd Mahidin & Anor v. Arab Malaysian Finance Bhd [1998] 2 CLJ 75 FC ***(foll)***

Bandar Builder Sdn Bhd & Ors v. United Malayan Banking Corporation Bhd [1993] 4 CLJ 7 SC ***(refd)***

Bank Simpanan Nasional v. Cyber Business Solutions Sdn Bhd; Elsag Datamat Spa (Third Party) [2010] 9 CLJ 202 HC ***(refd)***

Cheow Chew Khoon v. Abdul Johari Abdul Rahman [1995] 4 CLJ 127 CA ***(refd)***

Chi Liung Holdings Sdn Bhd v. Ng Pyak Yeow [1995] 4 CLJ 11 CA ***(refd)***

Chua Boon Chin v. JM McCormack & Ors [1978] 1 LNS 33 HC ***(refd)***

Eu Finance Berhad v. Lim Yoke Foo [1982] 1 LNS 21 FC ***(refd)***

Foo Loke Ying & Anor v. Television Broadcasts Ltd & Ors [1985] 1 CLJ 511; [1985] CLJ (Rep) 122 SC ***(refd)***

A *GP Ganapaiyah Maiya and Others v. MTR Associates (Kar) and Others, 1986 vol 59 Comp Cas 359* ***(refd)***
In Re Bolron Benefit Loan Society Coop v. Booth [1879] 12 CD 679 ***(refd)***
In The Matter Of Tahansan Sdn Bhd [1984] 1 LNS 1 HC ***(refd)***
Jasa VY Megah Sdn Bhd v. Sandakan Funeral Parlour Sdn Bhd (Suit No. S-28-04-2007) (Unreported) ***(refd)***
B *Kamawang Enterprise Sdn Bhd and Anor v. Mascom (M) and Anor [2009] MLJU 127* ***(refd)***
Lai Kim Loi v. Datuk Lai Fook Kim & Co [1989] 2 CLJ 107; [1989] 1 CLJ (Rep) 61 SC ***(refd)***
Lee Gee Pheng v. RHB Bank Bhd [2003] 4 CLJ 639 CA ***(refd)***
C *MUI Bank Bhd v. Golden Hornbill Hotel Sdn Bhd [1993] 1 CLJ 204 HC* ***(refd)***
Natseven TV Sdn Bhd v. Television New Zealand Ltd [2001] 4 CLJ 722 HC ***(refd)***
Ng Yok Gee & Anor v. CTI Leather Sdn Bhd; Metro Brilliant Sdn Bhd & Ors (Interveners) [2006] 3 CLJ 360 HC ***(refd)***
D *Pembinaan Thin Chai Sdn Bhd v. Citra Muda Sdn Bhd & Anor [2002] 3 CLJ 344 HC* ***(refd)***
Penang Port Commission v. Kanawagi Seperumaniam [2009] 1 CLJ 169 CA ***(refd)***
Re Eloc Electro-Optieck and Communicatie BV [1981] 2 All ER 1111 ***(refd)***
E *Re Griffin Securities Corporation [1999] 3 SLR 346* ***(refd)***
Ronald Beadle v. Hamzah HM Saman & Ors [2007] 1 CLJ 421 CA ***(refd)***
SBF Builders Sdn Bhd v. Bennes Engineering Sdn Bhd [2009] 1 LNS 1003 HC ***(refd)***
Sim Kie Chon v. Superintendent of Pudu Prison & Ors [1985] 2 CLJ 449; [1985] CLJ (Rep) 293 SC ***(refd)***
F *Sri Binaraya Sdn Bhd v. Golden Approach Sdn Bhd; PolyGlass Fibre (M) Bhd (Applicant) [2002] 4 CLJ 589 HC* ***(refd)***
Tong Aik (Far East) Ltd v. Eastern Minerals & Trading (1959) Ltd [1965] 1 LNS 190 FC ***(refd)***
Tractors Malaysia Bhd v. Tio Chee Hing [1975] 1 LNS 133 PC ***(refd)***
G *Vijayalakshmi Devi Nadchatiram v. Dr Mahadevan Nadchatiram & Ors [1995] 3 CLJ 493 FC* ***(refd)***
Watta Battery Industries Sdn Bhd v. Uni-Batt Manufacturing Sdn Bhd And Chow Siew Hon & 4 Ors (Interveners) [1993] 2 BLJ 46 HC ***(refd)***
Yeong Peng Wah v. Bahal Singh [1961] 1 LNS 156 HC ***(refd)***
H *Yew Chye Heng & Anor v. Venice Hill Resort Living Sdn Bhd; Yap Chi Keong & Anor (Intervener) [2007] 1 LNS 620 HC* ***(refd)***

Legislation referred to:
Companies Act 1965, s. 314(1)
Rules of High Court 1980, O. 14A

I Companies Act 1956 [Ind], ss. 582, 583
Companies Act 1948 [UK], s. 398

Other source(s) referred to:
Ian F Fletcher, *"The Law of Insolvency"*, 2nd edn, pp 77-80
Aiman Nariman Mohd Sulaiman, Aishah Bidin, Pamela Hanrahan, Ian Ramsay and Geof Stapledon, *"Commercial Applications of Company Law in Malaysia"*, 3rd edn, p 30

For the plaintiff - Dato' Manpal Singh (Nazuha Abdul Rahman with him); M/s Rabinder Budiman & Assocs
For the 1st & 3rd defendant - Amelda Md Din; M/s Amelda & Partners
For the 2nd defendant - Amir Asree Meor Nordin; M/s Zainul Rijal Talha & Amir

Reported by Suhainah Wahiduddin

JUDGMENT

Hamid Sultan Abu Backer J:

[1] This is my judgment in relation to the plaintiffs' application to set aside an order of winding up granted by the Malacca High court. And the 1st defendants' application encl. 10 and 2nd defendants' application encl. 11 to strike out the plaintiffs claim on the ground that the action is misconceived, and the order of a competent court of jurisdiction cannot be set aside; and any application therein in the 1st instance if possible must be made in the Malacca High Court. The prayers in the statement of claim read as follows:

(a) The appointment of Mohd Afrizan Bin Husain (NRIC No: 670821-03-5159) as the Provisional Liquidator for ARCI Enterprise by the purported creditors meeting held on 11.05.2007 is not valid in law and be set aside;

(b) A declaration that the order by the Malacca High Court dated 8th May 2008 which Ordered ARCI Enterprise to be wound up is not valid in laws and be set aside;

(c) a declaration that the Order by the Malacca High Court dated 8th May 2008 which Ordered the appointment of Mohd Afrizan Bin Husain (NRIC No: 670821-03-5159) as a Liquidator is not valid in laws and be set aside;

(d) An Order that Mohd Afrizan Bin Husain (NRIC No: 670821-03-5159) shall give full details of the ARCI Enterprise account at the time he executed his duty as Provisional Liquidator and Liquidator for ARCI Enterprise;

A (e) An Order for the Defendants to pay damages to be taxed by this Honourable Court to the Plaintiffs;

(f) Interest at the rate 8% per annum the total damages to be accounted from the date of Mohd Afrizan bin Husain was ordered to pay damages which is to be taxed by the Court
B to the Plaintiffs until full realisation;

(g) Costs for this action to be taxed based on the solicitors and client basis;

(h) Any other relief that deemed fit and proper by this
C Honourable Court.

[2] The focal point of this judgment deals with the issue whether a "partnership firm" registered in the business registry can be a subject matter of a winding up order by a company court
D pursuant to s. 314 which deals with "unregistered company".

Background

[3] In the instant case when all the three application was fixed for hearing and parties have filed the submission, I noticed that
E the winding up order of the court in the Malacca petition was made against a partnership firm registered in the business registry and the petitioners (1st defendant) had relied on s. 314 of Companies Act 1965 which relates to "unregistered companies" and in the Malaysia context *per se* will not apply to partnership.
F

[4] If that was the case the order granted by the Malacca High Court will be void and/or nullity *ab initio* and this suit and some of the prayers in the suit can be summarily determined. As there were lack of case laws in Malaysia in relation to the construction
G of s. 314 of CA 1965, I exercised my discretion under O. 14A of Rules of High Court 1980, on the grounds such question is suitable for determination without the full trial of the action; and such determination will finally determine the entire cause or matter or any claim or issue therein. In consequence I invited the parties
H to submit on the following issues:

(i) Whether the order of the Malacca High Court dated 8 May 2008 can be set aside by this court on the ground that it is a nullity *ab initio*?

I (ii) And if so, whether this court has jurisdiction to set aside an order of court of concurrent jurisdiction?

The answers to the above questions will not only dispose of the suit but also the three applications stated above.

[5] Parties relied on the following cases namely: *Tong Aik (Far East) Ltd. v. Eastern Minerals & Trading (1959) Ltd* [1965] 1 LNS 190; *Re Griffin Securities Corporation* [1999] 3 SLR 346; *Re Eloc Electro-Optieck and Communicatie BV* [1981] 2 All ER 1111; *In Re Bolron Benefit Loan Society Coop v. Booth* [1879] 12 CD 679; *Badiaddin Mohd Mahidin & Anor v. Arab Malaysian Finance Bhd* [1998] 2 CLJ 75; *Lee Gee Pheng v. RHB Bank Bhd* [2003] 4 CLJ 639; *In the matter of Tahansan Sdn Bhd* [1984] 1 LNS 1; *Pembinaan Thin Chai Sdn Bhd v. Citra Muda Sdn Bhd & Anor* [2002] 3 CLJ 344; *Jasa VY Megah Sdn Bhd v. Sandakan Funeral Parlour Sdn Bhd*; Suit No: S-28-04-2007; Kota Kinabalu High Court, Yew Jen Kie J, 3 April 2008; *MUI Bank Bhd v. Golden Hornbill Hotel Sdn Bhd* [1993] 1 CLJ 204; *Kamawang Enterprise Sdn Bhd and Anor v. Mascom (M) and Anor* [2009] MLJU 1275; *Eu Finance Berhad v. Lim Yoke Foo* [1982] 1 LNS 21; *Lee Gee Pheng v. RHB Bank Bhd* [2003] 4 CLJ 639; *Yew Chye Heng & Anor v. Venice Hill Resort Living Sdn Bhd; Yap Chi Keong & Anor (Intervener)* [2007] 1 LNS 620; *Ng Yok Gee & Anor v. CTI Leather Sdn Bhd; Metro Brilliant Sdn Bhd & Ors (Interveners)* [2006] 3 CLJ 360; *Bandar Builder Sdn Bhd & Ors v. United Malayan Banking Corporation Bhd* [1993] 4 CLJ 7; *Ronald Beadle v. Hamzah HM Saman & Ors* [2007] 1 CLJ 421; *Sim Kie Chon v. Superintendent of Pudu Prison & Ors* [1985] 2 CLJ 449; [1985] CLJ (Rep) 293; *Tractors Malaysia Bhd v. Tio Chee Hing* [1975] 1 LNS 133; *Sri Binaraya Sdn Bhd v. Golden Approach Sdn Bhd; PolyGlass Fibre (M) Bhd (Applicant)* [2002] 4 CLJ 589; *Vijayalakshmi Devi Nadchatiram v. Dr Mahadevan Nadchatiram & Ors* [1995] 3 CLJ 493; *Natseven TV Sdn Bhd v. Television New Zealand Ltd* [2001] 4 CLJ 722; *Chi Liung Holdings Sdn Bhd v. Ng Pyak Yeow* [1995] 4 CLJ 11; *Watta Battery Industries Sdn Bhd v. Uni-Batt Manufacturing Sdn Bhd And Chow Siew Hon & 4 Ors (Interveners)* [1993] 2 BLJ 46; *SBF Builders Sdn Bhd v. Bennes Engineering Sdn Bhd* [2009] 1 LNS 1003; *Abric Project Management Sdn Bhd v. Palmshine Plaza Sdn Bhd & Anor* [2007] 10 CLJ 7; *Chua Boon Chin v. JM McCormack & Ors* [1978] 1 LNS 33; *Ng Yok Gee & Anor v. CTI Leather Sdn Bhd; Metro Brilliant Sdn Bhd & Ors (Interveners)* [2006] 3 CLJ 360; *Lai Kim Loi v. Datuk Lai Fook Kim & Co* [1989] 2 CLJ 107; [1989] 1 CLJ (Rep) 61; *Penang Port Commission v. Kanawagi Seperumaniam* [2009] 1 CLJ 169; *Cheow Chew Khoon v. Abdul Johari Abdul Rahman* [1995] 4 CLJ 127.

Brief Facts

[6] The winding up order was in relation to Arci Enterprise Reg. No. 000915175-X (AE) a partnership under Partnership Act. That registration was for the period of 8 October 1992 to 28 October 2000. It must be noted that at the date of winding up order the registration of the partnership was not renewed. However, the partners had continued to register two other partnerships in the same name of the firm with a different composition of partners and in the absence of few partners on the grounds of sale, death and/or bankruptcy. The subsequent partnerships were registered from 29 July 2004 to 28 July 2005 with registration number 001502428-X and the 3rd and final partnership under the same name from 12 January 2006 to 11 January 2007 under the registration number 001593482-D. The partners of the first partnership were a registered holder of a mining certificate for all the lands in a particular lot in Lipis district. And the interests of the litigating parties were all concerned in respect of this subject matter which is not necessary for me to elaborate at this stage.

[7] The petitioners (1st defendant) in the Malacca High Court was said to be purported creditors and have obtained a winding up order pursuant to s. 314 of CA 1965 and obtained the appointment of liquidator, the 2nd defendant. The real issue is whether a winding up order can be granted against a partnership firm.

Preliminaries

[8] Section 314(1) of the CA 1965 reads as follows:

> (1) For the purposes of this Division "unregistered company" includes a foreign company and any partnership, association or company consisting of more than five members but does not include a company incorporated under this Act or under any corresponding previous written law. (emphasis added)

In the first instance it must be noted nowhere in the said section it says "partnership". What the section says is "foreign company and any partnership". As a general rule and the principles of interpretation invites the court to read the words partnership conjunctively and not disjunctively. (see *Yeong Peng Wah v. Bahal Singh* [1961] 1 LNS 156; Unreported judgment of Dr Hj Hamid Sultan bin Abu Backer in *Bank Simpanan Nasional v. Cyber Business Solutions Sdn Bhd; Elsag Datamat Spa (Third Party)* [2010] 9 CLJ 202, Suit No: D-22NCC-279-2009).

[9] It is often said that the CA 1965 in its original form was similar to UK Companies Act 1948. The history of CA 1965 is well summarised and articulated by the learned authors of *"Commercial Applications of Company Law in Malaysia"* Aiman Nariman Mohd Sulaiman, Aishah Bidin, Pamela Hanrahan, Ian Ramsay and Geof Stapledon, at p. 30 of the 3rd edn observe as follows:

> The law relating to incorporated companies in Malaysia is now contained in the Companies Act 1965 and the Companies Regulations 1966 which form the basic source for company law in Malaysia. The Companies Act 1965 is modelled on the English Companies Act 1948 and the Australian Uniform Companies Act 1961. Consequently, the history and development of company law in both jurisdictions have great significance in the development of legal principles of Malaysian company law. Hence, English and Australian judicial precedents are often cited in reference to a Malaysian provision, which has a corresponding Australian or English provision. However, over the last few years there have been several major amendments to the Companies Act and to English and Australian law that makes the body of company law here different from that currently applying in the United Kingdom or Australia.

The learned authors are correct in saying that CA 1965 is only modelled on UK Companies Act 1948. One must not read that as identical or similar, as some of the provisions are differently worded. In consequence the case laws from that jurisdiction may not be applicable to interpret our sections. For example, s. 398 of UK Companies Act 1948, is the nearest provision to our s. 314(1) and it reads as follows:

> 398. For the purposes of this Part of this Act, the expression "unregistered company" shall include any trustee savings bank certified under the Trustee Savings Bank Act, 1863, and any partnership, whether limited or not, any association and any company with the following exceptions:
>
> (a) a railway company incorporated by Act of Parliament, except in so far as is provided by the Abandonment of Railways Act, 1850, and the Abandonment of Railway Act, 1869, and any Acts amending them;
>
> (b) a company registered in any part of the United Kingdom under the Join Stock Companies Acts, the Companies Act, 1862, the Companies (Consolidation) Act, 1908, the Companies Act, 1929, or this Act;

A (c) a partnership, association or company which consists of less than eight members and is not a foreign partnership, association or company;

(d) a limited partnership registered in England or Northern Ireland.

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And the Indian Companies Act 1956 s. 582 reads as follows:

s. 582. Meaning of "Unregistered company". - For the purposes of this Part, the expression "unregistered company":

C (a) shall not include:

(i) a railway company incorporated by any Act of Parliament or other Indian law or any Act of Parliament of the United Kingdom;

D (ii) a company registered under this Act ; or

(iii) a company registered under any previous companies law and not being a company the registered office whereof was in Burma, Aden or Pakistan immediately before the separation of that country from India; and

E

(b) save as aforesaid, shall include any partnership, association or company consisting of more than seven members (at the time when the petition for winding up the partnership, association or company, as the case may be, is presented before the Court).

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[10] It must be noted that the above section in UK clearly differentiates "partnership" as one category, and to be read disjunctively. Similar provision is reflected in the Indian Companies Act 1956 which was modelled pursuant to UK Companies Act G 1948. The UK and Indian provisions specifically permits a partnership to be wound up in limited circumstances. In Malaysia the general practice in relation to partnership matters for debt due and owing is to sue the partners personally and thereafter if they are insolvent to proceed for bankruptcy. Partnership firm in the H Malaysian context and pursuant to case laws is not a separate legal entity. In consequence it cannot own property. Support for the proposition is found in a number of cases. In addition there is a separate regime provided by law to deal with insolvency of partners and/or dissolution of partnership firms. (see Partnership I Act 1961; Bankruptcy Act 1967; etc;). It will appear from the wording of s. 314(1) Parliament had this in mind and clearly did not provide for "partnership" *per se* to be treated as unregistered

company and to be wound up by the company court. It is trite that court must endeavour to give significance to every word in an enactment. In *Foo Loke Ying & Anor v. Television Broadcasts Ltd & Ors* [1985] 1 CLJ 511; [1985] CLJ (Rep) 122 SC, Abdoolcader SCJ had this to say:

> The Court however is not at liberty to treat words in a statute as mere tautology or surplusage unless they are wholly meaningless. On the presumption that Parliament does nothing in vain, the Court must endeavour to give significance to every word of an enactment, and it is presumed that if a word or phrase appears in a statute, it was put there for a purpose and must not be disregarded.

[11] Admittedly many of the countries in the commonwealth have kept to the tradition of following the common law and still to a large extent is part of the common law family. In these countries development of law relating to insolvency may appear to be the same but cannot be construed as identical as the relevant statutes and/or rules may not be *pari materia* and consequence the case laws cannot be followed.

[12] It must be noted that in essence an "unregistered company" is one which is not registered with the registrar of companies. And the company law in UK at early stages provided for partnership, association etc; to be wound up in limited circumstances. (see Ian F Fletcher, *"The Law of Insolvency"* 2nd edn, p 77 to 80). In dealing with s. 583 of the Indian Companies Act 1956 which relates to winding up of "unregistered company" Justice MP Chandra Kantraj Urs J, in *GP Ganapaiyah Maiya and Others v. M.T.R. Associates (Kar) and Others*, 1986 vol. 59 Comp Cas 359, explained the jurisprudence and had this to say:

> Proceedings under the Companies Act, 1956, are summary in character and is speedier way of safeguarding the interest of the partners or other persons who have formed themselves into an association of persons answering to the description of "deemed companies" under the Act to settle their mutual rights as well as public interest if it is involved. In some cases, such companies may owe debts to third parties-creditors whose interests also are to be safeguarded instead of driving them to civil litigation. Therefore, if an unregistered company within the meaning of that expression occurring in section 583 of the Act is dissolved, then the High Court on the motion of a person who is entitled to move the court is bound to wind up the company under clause (a) of sub-section (4) of section 583, even though there is

A another forum by which the dispute can be settled. This is because an unregistered company has been subjected to winding up proceedings under the Act generally in the public interest because of the large number of partners involved and the duration of civil litigation that may protract the proceedings of dissolution in a civil court.

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[13] Now more specific regulatory framework has been set out to deal with insolvency of partnership, association etc; not only in UK but also other parts of the commonwealth. In consequence the maxim '*generalia specialibus non derogant*' becomes applicable. For C example, now in England the Insolvency Act 1986 appears only to permit the official receiver as liquidator to perform the task in respect of unregistered company.

[14] In the Malaysian context it will appear parliament in its D wisdom had as early as 1965 has disentangled from the UK Companies Act 1948 relating to unregistered company and had specifically excluded 'partnership' to be wound up pursuant to CA 1965 unless it involves a foreign company. This is so because of the separate regime provided for in law which I have mentioned E earlier. If partnerships are to be wound up under the Companies Act it will lead to unprecedented number of cases filled in company courts on the grounds of inability to pay RM500 which will stand as a low threshold and be a subject matter of abuse as often seen in winding up proceedings. By enacting differently F parliament in its wisdom has avoided exodus of cases to be filed in company court.

[15] I have read encl. 3, 10 and 11, the affidavits and submission of the parties in detail. I take the view that the order of Malacca G High Court is a nullity *ab initio* and a court of concurrent jurisdiction can set it aside based on the Federal Court decision of *Badiaddin (supra)*. My reasons *inter alia* are as follows:

(a) The word partnership in s. 314(1) of CA 1965 must be read conjunctively and not disjunctively. In consequence the CA H 1965 does not permit a partnership to be wound up *per se* unless the criteria set out in the section is satisfied.

(b) The facts of the instant case will clearly show that the winding up order was obtained by the petitioners in the I Malacca court in breach of salient provision of the law, and is a liable to be set aside *ab initio*.

For reasons stated above:

(a) I hereby set aside the order of Malacca High Court dated 8 May 2008 given in suit No: 28-15-2007 and in consequence the appointment of the 2nd defendants as liquidator is also set aside.

(b) In respect of the three applications I take the view if not for my order stated above the plaintiff's action as pleaded is not maintainable in this court, and I would have allowed the defendants application to strike out, the plaintiff's action.

(c) The above order (setting aside) shall be the final order for this suit and the deputy registrar shall treat this suit as disposed off pursuant to O. 14A. And encls. 3, 10 and 11 is dismissed with no order as to costs. The 1st and 2nd defendant to pay the plaintiffs costs in the sum of RM5,000 each to the plaintiff.

I hereby order so.